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TABLE OF CASES CITED

STATUTES

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 507

THE INTERSTATE COMMERCE COMMISSION, THE WILLETT COMPANY OF INDIANA, INC., AND THE PENNSYLVANIA RAILROAD COMPANY, APPELLANTS

v.

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The court below filed no opinion in this case. Its findings of fact and conclusions of law (R. 44) are unreported. The report of Division 5 of the Commission (R. 6) appears in 42 M. C. C. 721.

JURISDICTION

The final decree of the specially constituted District Court was entered on June 30, 1944 (R. 46). The petition for appeal was presented on August 22, 1944 (R. 46), and the appeal was allowed on the same day (R. 49). The jurisdiction of this

Court is invoked under the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 220 (28 U. S. C. 47a); Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938, par. 4 (28 U. S. C. 345); and Section 205 (h) of Part II of the Interstate Commerce Act, c. 498, 49 Stat. 543 (49 U. S. C. 305 (g)). Probable jurisdiction was noted November 6, 1944.

QUESTIONS PRESENTED

The ultimate issue involved is the validity of the Commission's order of September 25, 1943, which granted an application made under Sections 206 and 207 of Part II of the Interstate Commerce Act for a certificate of public convenience and necessity, subject to prescribed conditions, for operation by Willett Company of Indiana, Inc., one of the appellants herein, as a common carrier by motor vehicle over specified routes between certain points in Indiana and Michigan. The Commission found that public convenience and necessity required the inauguration of the motor carrier service proposed.

Subordinate issues are:

1. Whether the Commission's ultimate finding that public convenience and necessity required the granting of the application was based upon proper statutory criteria.

2. Whether such ultimate finding was supported by requisite factual findings.

3. Whether there was substantial evidence to support such ultimate finding.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix "A;" *infra*, pp. 45–48.

STATEMENT

The Willett Company of Indiana, Inc. (hereinafter called Willett), a subsidiary of The Pennsylvania Railroad Company (hereinafter called Pennsylvania), is the holder of motor carrier operating rights covering about 25 routes which parallel generally the lines of Pennsylvania in the territory west of the State of Pennsyvania and east of Chicago and St. Louis.[1] Its motor carrier operations are auxiliary to and supplemental of the less-than-carload rail service of the Pennsylvania and its operating authorities are so restricted. This particular type of service was considered by this Court in *Thompson* v. *United States*, 321 U. S. 19.

By its application filed in this case Willett sought to extend its operations to seven additional routes along the rail lines of the Pennsylvania north of Fort Wayne, Indiana, on the Grand Rapids Division. The application took the usual course through the Commission. Protests were

[1] C–2815, Certificate issued January 5, 1942; BMC–10 issued as Certificate February 14, 1940, embracing Sub–1 and Sub–2; Certificate issued June 30, 1941, embracing Sub–3–4–5; Certificate issued May 28, 1943, embracing Sub–7–8.

filed by several motor carriers and associations within the territory of proposed operations. The Pennsylvania intervened on behalf of applicant. Hearings were had before Joint Board No. 23 on February 10 and June 1 and 2, 1942. In due course, following the filing of briefs, the issuance of a proposed report and the filing of exceptions thereto, Division 5 of the Commission entered its report and order of September 25, 1943, granting the application. Petition for reconsideration was denied by the entire Commission on February 8, 1944.

In considering the scope of the authority sought the Commission made two important administrative findings as a predicate to testing the record before it in the light of the statutory standard. These findings were: (1) that the applicant's proposed service will be of different character from that performed by motor carriers generally in that it will be limited to the handling of merchandise traffic to and from points on the lines of the railroad in substitution for train service (R. 11); (2) that this proposed service as restricted will not be "directly competitive or unduly prejudicial to the operation of any other motor carrier (R. 11).

The grant of authority was based upon the Commission's ultimate finding, in the statutory language, that the present and future public convenience and necessity require operation by the applicant as a common carrier by motor vehicle and that applicant is fit, willing, and able

properly to perform the service. Conditions were prescribed designed to restrict the proposed service to a coordinated motor-rail service.[2]

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[2] "We find that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, between the points and over the routes shown in the appendix hereto, serving intermediate and off-route points which are stations on the rail line of The Pennsylvania Railroad Company, subject to the following conditions:

"1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Pennsylvania Railroad Company, hereinafter called the railroad.

"2. Applicant shall not serve any point not a station on a rail line of the railroad.

"3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points: Fort Wayne, Ind., and Grand Rapids, Mich.

"4. All contractual arrangements between applicant, the railroad, and the American Contract and Trust Company shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

"5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

"We further find that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; and that a certificate authorizing such operations should be granted.

"Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued." 42 M. C. C., 726–727. (R. 12.)

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Subordinate findings germane to the question of public convenience and necessity were:

1. A substantial volume of tonnage to be transported over the several routes, based upon less-than-carload rail traffic handled by the Pennsylvania (R. 8).

2. Resulting release of freight cars for use in through freight trains (R. 8).

3. Elimination of switching and its attendant expense (R. 8).

4. Expedition of movements of less-than-carload traffic and more frequent service (R. 8).

5. Advantage in the use of applicant's facilities over those of existing carriers and that the public purpose involved in the proposed coordinated service cannot be served as well by existing motor carriers (R. 11).

Following the Commission's denial of the petition for reconsideration the present suit was instituted. The principal contention made by appellees in the court below was that the Commission had failed to apply the proper statutory criteria in arriving at its conclusion that public convenience and necessity required the inauguration of the proposed service; that the fatal defect in the Commission's action lay first in its failure to find that existing motor carrier facilities within the territory proposed to be served were inadequate or that existing operators were unwilling to undertake the proposed service, and secondly in that the applicant had failed to sustain the

burden of showing such inadequacy or unwillingness and as a consequence the record upon which the Commission acted was deficient as a matter of law.[3]

At the hearing on April 28, 1944, in the court below the record before the Commission was introduced in evidence. This constituted all of the evidence in the case. On June 30, 1944, the court below entered its findings, conclusions, and decree setting aside the Commission's order. It filed no opinion.

While the process of the court's reasoning is, therefore, obscured, it is to be noted that the court starts with a finding, in direct contradiction to that of the Commission, that the "operations proposed are motor carrier operations which would be competitive with existing motor carrier service." (R. 45). It then finds that the Pennsylvania refused to make use of existing motor carrier service; that applicant's proof concerned improvement of railroad service; that no proof of inadequacy of existing motor carrier service was presented by applicant but protestants had presented proof of such adequacy; and that there was no substantial evidence to prove public convenience and necessity (R. 45). The conclusions of law were that the applicant had failed to meet and the Commission

[3] There were other allegations of error relating to procedural deficiencies and in the admission and rejection of evidence but the court below did not deem them of sufficient merit to pass upon.

had failed to exact from applicant, the requisite proof to establish public convenience and necessity, and that there was no substantial evidence to support the Commission's order (R. 45, 46).

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that the operations proposed were motor carrier and would be competitive with existing motor carrier service.

2. In holding that there was no substantial evidence to prove public convenience and necessity.

3. In concluding that applicant had not met the statutory requirements and that the Commission had failed to exact from applicant, as a railroad subsidiary, the requisite proof to establish public convenience and necessity.

4. In concluding that there was no substantial evidence to support the order of the Commission that public convenience and necessity required the issuance of a certificate authorizing operation by motor vehicle as a common carrier of property over the routes involved.

5. In enjoining the enforcement of the Commission's order of September 25, 1943.

6. In failing to dismiss the complaint.

SUMMARY OF ARGUMENT

Congress, in enacting the Motor Carrier Act of 1935, was acting with knowledge of the special use of motor carriers in railroad service. Both the

declared policy of 1935 and that of the Transportation Act of 1940 emphasize the desirability of coordination of the several types of transportation. The proviso of section 5 (2) (b) confirms this with respect to rail and motor carrier service.

The use of motor vehicles as an adjunct or supplement to railway freight service antedated the Motor Carrier Act of 1935. Such use as a substitute for way-freight train operation in the handling of less-than-carload freight was recognized by the Commission as a desirable improvement of rail service in two investigations (*Motor Bus and Motor Truck Operation,* 140 I. C. C. 685 (1928); *Coordination of Motor Transportation,* 182 I. C. C. 263), both of which formed the basis of the 1935 Act.

Early in the history of federal regulation of the trucking industry the Commission dealt with applications involving the substituted truck-for-rail service in the handling of less-than-carload rail shipments. It recognized such use as constituting a special type of service. Thereafter the Commission adopted a consistent policy in dealing with this type of application. It described it as a "new form of service, utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone." *Kansas City S. Transportation Co., Inc. Common Carrier Application,* 10 M. C. C. 221, 235.

Succinctly stated, less-than-carload shipments from and to way stations on the rail line are handled as rail shipments, under rail billing and rail tariffs, except that the local movement is made in trucks instead of in way-freight trains.

So too the Commission has consistently held that the grant of the right to engage in this special type of truck operation does not involve the introduction of new truck competition within the authorized territory since it works only the improvement of an existing transportation service. Specifically in the instant case the Commission found that the proposed service would not interject a new competitive element in the field. While the Commission has recognized the possibility of intensified competition resulting from improvement in the transportation service offered by an existing competitor its policy has not been to retard any form of progress in transportation which serves the public interest. *Kansas City S. Transport Co., Inc.—Common Carrier Appl.*, 28 M. C. C. 5, 10; *Missouri Pacific R. Co.,—Extension*, 41 M. C. C. 241, 244.

In all cases involving this particular kind of service the Commission has carefully guarded the rights of rail-competing motor carriers not only by specifically defining the precise service authorized and annexing conditions designed to so limit it, but also by retaining the right at any time in the future to prescribe further conditions

that it may find necessary in order to restrict the operations to a service auxiliary to or supplemental of rail service. A review of the many cases of this type shows this to be a continuing and consistent policy, and one that accords with the national transportation policy. *Rock Island Motor Transit Co.—Extension,* 43 M. C. C. 470, 473, 474. An example of the exercise of the Commission's reserved right to act *in futuro* in preventing encroachment upon ordinary motor carrier operations is to be found in *Campbell Sixty-six Express, Inc.* v. *Frisco Transp. Co.,* 43 M. C. C. 641.

In passing upon the merits of the many applications for the right to conduct this special type of truck operations, the Commission has followed a consistent pattern. It has considered the particular public advantages to be gained in each proposal coming before it and has measured them in the light of the statutory standard. In the instant case, as in the others, these advantages are, generally speaking, improvement and expedition in handling a substantial volume of less-than-carload rail traffic, the release of freight cars for use in through railroad movements, and the resulting economies which the substituted service would bring about.

The determination of the issue of public convenience and necessity is an administrative function within the Commission's expert competence

and there is no specification of the considerations by which the Commission is to be governed in making such determination. *Texas & Pacific Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.*, 270 U. S. 266, 273; *Chesapeake & Ohio Ry. Co.* v. *United States*, 283 U. S. 35, 41–43.

The finding of the court below indicates that the Commission's action was invalid because it thought it was incumbent upon Willett to show existing inadequacy of motor carrier service in the territory in question. But that issue never had a place in the proceeding since there was involved a special type of service, a sequence of rail and motor truck operations, with which no existing service was comparable. To sustain its finding the court below was forced to establish the premise that the integrated service proposed was in competition with the service conducted by existing motor carriers. In so doing it went beyond its powers and substituted its judgment for that of the Commission upon a purely administrative matter. *Graf* v. *Powell*, 314 U. S. 402, 411.

The Commission's finding of public convenience and necessity in this case is founded upon factors which have intimate relation to the public convenience and necessity. These findings include economies to be effected in the handling of local merchandise freight, increased efficiency, expedited and more frequent local service, and release of freight cars for other and more important

rail service. These findings alone rationalize the Commission's action, and are legally sufficient upon the issue of public convenience and necessity. But the Commission also gave consideration to the comparative advantages, on the one hand, of permitting the railroad through its chosen agent to conduct the proposed operations, and on the other, of having the several independent motor carriers perform the same service. It reiterated its prior considered judgment that the former method would result in more efficient and economic service.

While no precise issue was raised in the court below, of substantial evidence to support the findings upon which the Commission's action was ultimately based, we have given record references to show that such findings had ample support in the evidence.

ARGUMENT

I. The Substitution of Motor Truck for Local Rail Service in the Handling of Less-Than-Carload Rail Traffic is in Consonance With the Policy of the Interstate Commerce Act

In *Motor Bus and Motor Truck Operation*, 140 I. C. C. 685, (April 10, 1928) the Commission stated (p. 721):

> "Efficient and economical management of railroads will to a constantly increasing extent call for the utilization of motor

vehicles for short hauls or as feeder or distributing agencies."

At that time eleven railroads were using motor trucks to replace local freight trains. ("Facts and Figures of the Automobile Industry," 1927 Edition, issued by the National Automobile Chamber of Commerce.)

In 1930 the Commission undertook an investigation to secure needed information in regard to transportation by motor vehicles, the extent and character thereof, its relation to interstate commerce, and particularly to transportation by railroad and the extent of existing coordinated service. This investigation culminated in the Commission's report of April 6, 1932, *Coordination of Motor Transportation;* 182 I. C. C. 263, wherein it recommended federal regulation of motor carriers. In dealing with the extent to which rail carriers were then engaged in motor carrier operations the Commission described a specialized motor carrier operation in substitution for local rail movements of less-than-carload traffic, as follows (p. 336):

> "(a) *Substitution of trucks for way trains and terminal switching.*—It is generally recognized that peddler or way-freight operations, as to many points, consume much more time than do trucking movements and that they are costly because of the number of transfers required and the light loading of cars. In many

instances the roundabout character of railroad lines adds to the difficulty. With increased highway competition, these drawbacks have become more and more serious. For several years, therefore, a number of railroads* have been substituting truck for rail movements of less-than-carload traffic from designated transfer points, including some points specifically set up for the purpose of concentrating freight by rail for truck delivery to outlying stations. In the reverse direction the trucks collect freight for concentration at such transfer points. The distances covered are commonly 15 to 20 miles in either direction from the concentrating point. Regular rail rates apply and store-door service is not furnished, but frquently the substitution of truck for rail movement is not shown in the tariff. The time of way-freight trains, which commonly carry a crew of five or six men, is thereby considerably reduced or the length of runs increased, deliveries are frequently made one to two days earlier, a more flexible service is made available, and the number of lightly loaded cars is reduced. By taking care of traffic requiring expedited movement, it is further possible in some cases to reduce train service on unimportant lines from a daily basis to a 2-day basis, and in other cases, by

*For example, the Pennsylvania, the New York, New Haven and Hartford, the Boston and Maine, the New York Central, and the St. Louis-Southwestern.

> eliminating less-than-carload movements, through trains have been able to take over the carload movement of way trains, eliminating the latter. The requirements of carload traffic and the divergence of highways from the routes of rail lines render it impossible to abandon all local freight-train service."

These two Commission reports were forerunners of the Motor Carrier Act of 1935.[4]

That Congress acted with full knowledge that the railroads had been using motor trucks in certain phases of their rail transportation service and that such use was to the public advantage is shown from the testimony of Commissioner Eastman before the House and Senate committees in 1935:

> "They [the railroads] are utilizing motor vehicles in their terminal operations and they have used them as a substitute for way freight service, in some cases. My own view is that there will be found many more ways where they can be used to advantage in combination with railroad service and I hope to see the time when the railroads will utilize these opportunities fully." (Hearings on H. R. 5262 and H. R. 6016, 74th Cong., 1st Sess., 1935, p. 46)
>
> "My own personal opinion is that the railroads are going more and more to find

[4] S. 1629 was the bill that ultimately became the Motor Carrier Act of 1935. Both the Senate and House Reports on S. 1629 refer to these reports as forming the basis of the Motor Carrier Act.

> that they can use trucks and busses to advantage in connection with their own service—supplement it and substitute for it where they can do the job better than the rails can do it." (Hearings on S. 1629, 74th Cong., 1st Sess., 1935, p. 85)

Against this background must be read the policy of the Motor Carrier Act, 1935, "to improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers." The new declaration of policy of the Transportation Act of 1940 again emphasized the importance of coordinating and preserving all modes of transportation, and the promotion of "safe, adequate, economical and efficient service, * * * all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." The use of motor carriers as an adjunct to rail service was recognized and sanctioned by the provisions of section 5 which empowered the Commission to permit a railroad to acquire ownership or an interest in a motor carrier where consistent with the public interest and upon a finding that the transaction "will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition".

It is quite apparent that a coordinated rail-truck service in the handling of local less-than-carload freight traffic by rail carriers was not an innovation subsequent to the Motor Carrier Act of 1935. It already had a recognized place in the national transportation scheme. Consequently the language of the 1935 transportation policy as well as the policy declared by the Transportation Act of 1940, and the provisions of section 5, must be read as not only confirming the economic desirability of employing motor vehicles in the special type of service but enjoining upon the Commission the duty to foster and encourage such use when to the public advantage.

II. Consistently Since 1935 the Commission Has Recognized the Use of Motor Vehicles in Substitution for Way-Freight Rail Service on Less-Than-Carload Freight as Constituting a Special Type of Service

Since the enactment of the Motor Carrier Act of 1935 the Commission has dealt with numerous applications involving the use of motor vehicles as an adjunct to rail transportation. Numerous also have been the applications dealing with the substitution of trucks for the movement of local less-than-carload freight. The Commission's printed reports contain some 94 opinions dealing with this special type of service.[5] These opinions disclose a consistent pattern. First, the Commission has described the special type of substi-

[5] See Appendix "B," p. 49.

tuted service, second, it has considered the special public benefits which derive from the particular service sought to be inaugurated, third, it has considered the ability of the applicant properly to perform the service, and lastly it has been abundantly cautious in confining the proposed operations to this special type of service by annexing appropriate conditions and by retaining the right at any time in the future to impose further conditions designed to confine the operations to the truck-for-rail service.

In *Thomson* v. *United States*, 321 U. S. 19, this court succinctly described the type of service which is involved in this case and which has so many times been considered by the Commission. It is that service which the Commission described in *Coordination of Motor Transportation, supra.* Less-than-carload shipments from and to way stations on the rail line are handled as rail shipments, unde rail billing and rail tariffs, except that the local movement is made in trucks. The Commission has classified this kind of truck transportation as a special type. Early in the regulation of the trucking industry the Commission in describing this service said, *Pennsylvania Truck Lines, Inc.—Acquisition of Control*, 1 M. C. C. 101, 111:

> "* * * The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and

> many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. Nor do we believe that the creation of this new form of service will 'unduly restrain competition.' On the contrary, it should have the opposite effect."

Again in *Kansas City S. Transportation Co., Inc., Common Carrier Application,* 10 M. C. C. 221, 235, the Commission stated:

> "* * * Moreover, it is clear that this coordinated rail-motor service will be a new form of service, utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone. * * *."[*]

III. The Commission Has Consistently Held That the Grant of the Right To Engage in This Truck-for-Rail Service Does Not Involve the Introduction of New Competition Within the Authorized Territory

Of utmost importance to a consideration of the issues here involved has been the fact that

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[*] Similar finding was made in *Illinois Central R. Co. Common Carrier Appl.*, 12 M. C. C. 485; *Gulf, M. & N. R. Co. Common Carrier Appl.*, 18 M. C. C. 721; *Missouri Pacific R. Co., Extension of Operations—Illinois*, 19 M. C. C. 605; *Willett Co. of Ind., Inc., Extension—Ill., Ind. and Ky.*, 21 M. C. C. 405; *Pacific Motor Trucking Co. Common Carrier Appl.*, 34 M. C. C. 249.

the Commission defined one of the characteristics of this special form of service as being a mere improvement of what is essentially a rail service. Consequently it has consistently held that its inauguration does not inject a new competitive factor in a given territory. Moreover it has made a finding to this effect, not only in this case, but in other similar applications.

In *Kansas City S. Transp. Co., Inc. Common Carrier Appl., supra,* the contention was made, as it is in the instant case, that the existing motor carriers would suffer severely from a new competitive service. To this the Commission said, p. 237:

> "Protestants now meet with the competition of the railway, but, in the case of the merchandise traffic handled in less-than-carload lots, that competition has not been particularly formidable. The railway now proposes to improve the handling of that traffic by establishing a coordinated truck-rail service in connection with applicant. As we have seen, the conclusion is warranted that there is a public need for this coordinated service, that it is a new and different character of service which neither the railroads nor the trucks alone can supply, and that it cannot be furnished effectively and well except through the use of applicant's facilities. We do not believe that the development of this new form of service will seriously endanger the operations of protestants, but, in any event, the

> public ought not to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers. If this principle had been followed, indeed, no motor-carrier service could have been developed."

The competition which the Commission speaks of here is that which already exists and the diversion of traffic is only that which is a possible concomitant to an improved existing service.

In a subsequent report in the same case Chairman Eastman speaking for the full Commission said, *Kansas City S. Transport Co., Inc., Common Carrier Appl.*, 28 M. C. C. 5, 10:

> "It must be borne in mind, as above indicated, that in all of these cases the railroad has been and is transporting the traffic in question between its stations and is under obligation to continue to do so. What it is seeking is not to enter a new field of service but to substitute a more efficient for a less efficient means of service. In both its direct and its indirect effect such substitution is in the public interest. * * * One competitive carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest."

In *Missouri Pacific R. Co.—Extension*, 41 M. C. C. 241, 244, the Commission again pointed out the

distinction between a new competitive service and improvement in existing service:

> "Neither do we believe that the operations of competing carriers will be unduly affected by the granting of authority to operate over the routes in question. The service to be rendered is but a substitution of motor for rail service in fulfilling applicant's undertaking to transport as a railroad—a substitution of a more efficient for a less efficient means of service. The traffic is less-than-carload rail traffic which applicant is and has been under obligation to transport and which it will continue to transport whether we grant or deny the application. The traffic moves and will continue to move at rail rates and on rail billing. In short, the service will be auxiliary to or supplemental of applicant's rail service, and the authority granted will be so limited."

In *Seaboard Air Line Ry.*, 34 M. C. C. 441, which is now before this Court, No. 558, the Commission said, p. 443:

> "* * * Applicants, as a motor carrier, do not solicit traffic from the general public but merely utilize motor vehicles in fulfilling their undertaking to transport as a railway. The motor-vehicle service is auxiliary to or supplemental of applicants' rail service and is so limited by condition 1. The modifications requested [change from prior or subsequent rail movement conditions to key points] will in no way change the char-

> acter of the service applicants are authorized to perform as a motor carrier; nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor-carrier field."

In *Penna. Truck Lines, Inc.—Control—Barker M. Frt.*, 5 M. C. C. 9, 11, the Commission described negatively the approved operations as follows:

> * * * Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the railroad itself, those which compete with an established motor carrier, or which invade to a substantial degree a territory already adequately served by another rail carrier."

And finally in the case here considered the Commission specifically found that the proposed service would not interject a new competitive element in the field (R. 11).

IV. In Granting Operating Authorities To Engage in This Specialized Service the Commission Has Been at Pains To Condition the Grants of Authority so as To Prevent Expansion Into or Encroachment Upon the Service of Motor Carriers Engaged in Ordinary Trucking Service Within the Authorized Territory

In all the cases of this kind with which it has dealt the Commission has jealously guarded the

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[7] Of significance is the fact that the Commission in determining the volume of tonnage which the substituted service would handle used the actual less-than-carload freight which was handled by rail over the proposed routes (R. 427).

rights of competing motor carriers, not only by specifically defining the precise service authorized and annexing conditions designed to so limit the service, but by retaining the right at any time in the future to prescribe further conditions that it may find necessary in order to restrict the operations to a service auxiliary to or supplemental of the rail service. While the reservation with respect to the imposition of future conditions has been common to all grants of authority to conduct this type of service, other conditions have varied to meet the needs of the particular case. But running throughout all of these cases is shown the consistent policy on the Commission's part to foster and encourage this improved form of service but at the same time to set safeguards against an expansion to a point where it might compete destructively with the highway service of the independent motor carriers. A cursory examination of the reported cases exhibits this policy.

One of the first specific conditions which the Commission prescribed was that the applicant shall not render service from or to, or interchange traffic at any point other than stations on the lines of the railroad.[8] Subsequently the Commission

[8] *Great Northern Railway Co., Common Carrier Appl.*, 1 M. C. C. 73; *Rock Island Motor Transit Co.—Purchase—White Line M. Frt.*, 5 M. C. C. 451; *Texas & Pacific Motor Transport Co.—Purchase—Johnson*, 5 M. C. C. 89; *Texas & Pacific Motor Transport Co.—Purchase—Southern Transp. Co.*, 5 M. C. C. 653; *Penna. Truck Lines, Inc.—Control—Alko*

adopted the so-called "prior or subsequent rail haul" condition, *Kansas City S. Transp. Co., Inc., Common Carrier Appl.*, 10 M. C. C. 221, which provided that the substituted service be limited to shipments received from or delivered to the railroad under a through bill of lading covering in addition to movement by truck, a prior or subsequent movement by rail. Chairman Eastman in a concurring opinion in the case last cited criticised the rail-track movement condition as too restrictive pointing out that supplementary truck operation where there is no rail movement "may well be necessary to a coordination which will produce the best possible service at the lowest possible expense." (P. 241.)

Similar rail-haul conditions were imposed in numerous subsequent cases.[9] The requirement of

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Exp. Lines, 5 M. C. C. 77; *Penna Truck Lines, Inc.—Purchase—Cain*, 5 M. C. C. 73; *Rock Island M. Transit Co.—Purchase—Burlington Transp. Co.*, 5 M. C. C. 629; *Rio Grande Motor Way, Inc.—Purchase—Coleman*, 5 M. C. C. 643; *Burlington Transp. Co.—Purchase—Sand*, 5 M. C. C. 658; *Pacific M. Trucking Co.—Control—Peoples Frt. Line*, 5 M. C. C. 302; *Penna. Truck Lines, Inc.—Control—Barker M. Frt.*, 5 M. C. C. 9; *Burlington Transp. Co.—Purchase—Bell Transfer, Inc.*, 5 M. C. C. 291.

[9] *Illinois Central R. Co., Common Carrier Appl.*, 12 M. C. C. 485; *Texas & Pacific Motor T. Co.—Extension*, 14 M. C. C. 645; *Texas & Pacific Motor T. Co.—Extension*, 14 M. C. C. 649; *Gulf, M. & N. R. Co., Common Carrier Appl.*, 18 M. C. C. 721; *Missouri Pac. R. Co.—Extension*, 19 M. C. C. 605; *Great Northern Ry. Co.—Extension*, 19 M. C. C. 745; *Mis-*

a prior or subsequent rail haul was abandoned as an unalterable condition in the performance of this substituted service upon reconsideration by the full Commission of the *Kansas City* Case and the alternative "key point" condition was imposed. *Kansas City S. Transport Co., Common Carrier Appl.*, 28 M. C. C. 5. This so-called "key point" condition provides that, "no shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points" (key points are then specified): The reason for the modification of the rail-haul condition was stated by the Commission as follows, p. 10:

> "As the above quotations indicate, [10 M. C. C. 221, 238, 239] the thought of division 5 in regard to this matter was that public convenience and necessity required a coordi-

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souri Pac. R. Co.—Extension, 20 M. C. C. 563; *Rock Island Motor T. Co., Common Carrier Appl.*, 21 M. C. C. 513; *Barcus Extension*, 22 M. C. C. 147; *Louisiana, A. & T. Ry. Co., Common Carrier Appl.*, 22 M. C. C. 213; *Penna Truck Lines, Inc., Common Carrier Appl.*, 24 M. C. C. 261; *Willett Co. of Ind., Inc., Extension*, 21 M. C. C. 405; *Pacific Motor Trucking Co., Common Carrier Appl.*, 21 M. C. C. 761; *Rock Island Motor T. Co.—Extension*, 29 M. C. C. 695; *Northern Pacific T. Co., Extension*, 30 M. C. C. 58; *Rock Island Motor T. Co., Extension*, 30 M. C. C. 243; *Chicago & N. W. Ry., Common Carrier Appl.*, 31 M. C. C. 299; *Seaboard Air Line Ry. Co., Extension*, 31 M. C. C. 658; *Frisco Transportation Co.—Extension*, 32 M. C. C. 141; *Gulf Transportation Co.—Extension*, 32 M. C. C. 762; *Rock Island Motor T. Co.—Extension*, 33 M. C. C. 506.

nated rail-and-truck service, which, upon the records of the cases before it, could only be furnished efficiently and effectively by conducting the two forms of transportation under a single control, but that there was adequate independent motor-carrier service between all stations, generally speaking, so that public convenience and necessity did not require the institution between the stations of new motor-carrier service under railroad control which is not coordinated with prior or subsequent rail service. Hence condition 3. Upon further consideration, we are of the opinion that the division gave insufficient weight to the fact that the railroad, as well as the independent motor carriers, has been and is furnishing service between the stations, but that between many of them the present means of railroad service, the way-freight train, is uneconomical and inefficient. This is the reason for coordinating truck service with the rail service, and, as we have found (and as division 5 also found), public convenience and necessity require the increased economy and efficiency which will result from such substituted use of trucks. By the same reasoning, however, public convenience and necessity require the substitution of trucks for way-freight train service regardless of whether there is a prior or subsequent movement by rail. Such substitution is a part of the plan of coordination, and unless it can be accomplished, the full benefits in increased economy and efficiency

which the public interest demands cannot be secured."

"Key points" were described as the larger points on the lines of the respective railroads between which through freight trains are operated and which are used as break-bulk points for distribution by way-freight trains of merchandise destined to way stations located between such points, p. 11.

Thus while the requirement of a prior or subsequent rail movement was abandoned as a necessary condition to grants of this character the substitution therefor of the key points condition did not change the essential character of the service as auxiliary to or supplemental of rail service.

Two recent decisions of the Commission further emphasize the policy of the Commission of denying the right of rail carriers to enter the motor carrier field generally. In *Rock Island Motor Transit Co.—Extension,* 43 M. C. C. 470, 472–474, the motor carrier subsidiary of the railroad in addition to proposed substituted service sought authority to conduct all-motor operations over certain routes. The Commission denied the general authority on the ground of lack of public need and inconsistency with the national transportation policy. In *Campbell Sixty-Six Express, Inc.* v. *Frisco Transp. Co.,* 43 M. C. C. 641, complaint was made that the motor carrier subsidiary of the St. Louis-San Francisco Railway had con-

ducted motor carrier operations in violation of section 206 (a) and had failed to comply with the orders, rules and regulations of the Commission to which the operations of the motor carrier subsidiary were subject. The Commission took occasion to examine the various operating authorities of the defendant motor carrier. In connection therewith, it stated, p. 653:

> "The operations considered herein were acquired piecemeal, and undoubtedly it did not appear at the time the certificates were first issued that limitations of the character requisite to insure the rendition of a rail auxiliary and supplementary service were necessary. In some instances, it could not then have been determined with precision the type of limitations that would be necessary. And, as noted above, with respect to all the acquisitions, there was the clear implication by the Transportation Company that the service it intended to perform was of a character so well understood and so different from that of motor common carriers having no affiliations with railroads as to require no specific limitations or restrictions. That definite and precise limitations and restrictions have not been imposed is not important, however, in view of the reservation, in many of the purchases, of the right to impose such restrictions when necessary. All the certificates entered pursuant to the orders in the purchase cases made appropriate reference to the latter,

and so does the certificate issued on December 20, 1943.

"We find that the various acquisitions of motor common carrier operations herein considered and specified in the complaint herein, except those approved in 35 M. C. C. 132 and 255, were authorized and approved in order that the Transportation Company could perform the character of motor-carrier service that is strictly auxiliary to or supplemental of the rail service of the railway; and that in respect of such operations the Transportation Company was not authorized to, and did not, acquire the right to provide direct motor-carrier service to the public; that the performance of such service by the Transportation Company in connection with such operations, indicated in the appendix hereto, has been and is unauthorized and should be discontinued."

V. In Approving the Inauguration of This Specialized Service the Commission Has Consistently Applied the Same Criteria of Public Convenience and Necessity

Considerations which have moved the Commission to favorable action in cases involving the kind of motor truck service which is here proposed have been uniform and consistent. Adopting the general proposition that the use of trucks as an adjunct to rail service is a desirable end and should be encouraged, the Commission has considered the particular advantages to be gained in each proposal coming before it and has

measured them in the light of the statutory standard. These advantages, generally speaking, have been the economies which will result in the use of trucks in substitution for local way-freight trains, faster and more frequent service to the local shippers, improvement in the through rail service on carload shipments, the release of cars for such through movements.

Thus in *Kansas City S. Transport Co., Inc. Common Carrier Appl., supra,* the Commission found, p. 235:

> "The railway is now furnishing a less-than-carload, or merchandise, freight service which is expensive and in many respects unsatisfactory and inefficient. Through applicant, if the certificate sought be obtained, it proposes to use motor vehicles in coordination with its rail operations in such a way that a merchandise service can be provided that will be much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served. * * *".

Again in *Illinois Central R. Co. Common Carrier Appl., supra,* the Commission said, p. 491:

> "The chief purpose of the proposed service is to avoid as far as possible the use of local way-freight trains in the handling of merchandise traffic, both because such trains are costly to operate and because they do not afford sufficiently expeditious, flexible, and convenient service to the small stations

> they are designed to serve. The inauguration of the coordinated operations here proposed will result in improved service on merchandise as well as carload traffic. There will be no diversion of traffic from other agencies other than what may come about as a result of the offering of an improved service to the shipping public. * * *"

Similar basis for its action is to be found in the instant case. The public convenience and necessity which required the approval of Willett's application was induced by the need for transporting a substantial volume of less-than-carload traffic, improvement and expedition in the handling of this traffic, the release of needed freight cars for use in through railroad movements, and the resulting economies which the substituted service would bring about. (*Supra* p. 6)

VI. In Passing Upon the Issue of Public Convenience and Necessity Presented to It in the Instant Application the Commission Did Not Apply Improper Criteria Nor Fail To Apply Necessary Criteria

Section 207 (a) of part II of the Interstate Commerce Act empowers the Commission to issue a certificate authorizing operations as a motor carrier "if it be found that * * * the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity." This statutory requirement applies equally to all ap-

plicants for certificates as a motor carrier, be they railroad, railroad subsidiary, independent corporation, or individual.

Obviously, the issue of "public convenience and necessity" is a matter peculiarly requiring the exercise of the Commission's expert judgment in the field of transportation. *New York Central Securities Co.* v. *United States,* 287 U. S. 12, 25; *United States* v. *Carolina Freight Carriers Corp.,* 315 U. S. 475, 482, 490; *Board of Trade of Kansas City* v. *United States,* 314 U. S. 534, 546. See also *Interstate Commerce Comm'n* v. *Union Pacific R. Co.,* 222 U. S. 541, 547; *O'Keefe* v. *United States,* 240 U. S. 294, 303; *Rochester Telephone Corp.* v. *United States,* 307 U. S. 125, 146; *Gray* v. *Powell,* 314 U. S. 402, 411–412. In exercising this administrative function there are no specifications of the considerations by which the Commission is to be governed in determining whether public convenience and necessity require the inauguration of motor vehicle service. As under section 1 (18) dealing with the extension and abandonment of railway lines it is the duty of the Commission to find the facts and in the exercise of a reasonable judgment to determine that question. *Texas & Pacific Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.,* 270 U. S. 266, 273; *Chesapeake & Ohio Ry.* v. *United States, supra*; *Colorado* v. *United States,* 271 U. S. 153, 168.

While the statutory standard for the granting of operating authority is always constant the

elements which go to make up that requirement may vary according to the particular type of service proposed. Conceding that where it is proposed to *duplicate* an existing motor carrier service the issue of the adequacy of such existing service may be a vital factor, the whole structure of appellee's argument rests upon this initial error, namely the unwarranted assumption that the service they are rendering is in fact a duplication of the proposed service.

In *Thompson* v. *United States*, 321 U. S. 19, 24, this Court accurately described the proposed service as follows:

> "The undisputed facts here disclose that only the railroad holds itself out to the general public to engage in a single complete freight transportation service to and from all points on its lines. As an integral and essential part of this service tendered by the railroad, motor vehicle transportation between certain stations is provided. It is completely synchronized with the rail service and has none of the elements of an independent service offered on behalf of the motor vehicle operators. Their operations are the operations offered by the railroad as component parts, not as separate or distinct segments, of its single service. They may be replaced or eliminated at the sole discretion of the railroad."

In this case there were no motor carriers in the territory affected capable alone of providing an integrated rail-truck service. The service pro-

posed was dissimilar from the over-the-road service they were rendering. Hence no question of unnecessary or improvident duplication of service was involved.

The mere willingness of a certified trucker to furnish one part of an integrated service does not satisfy the rule,—if there be one,—that where the inadequacy of existing service is not shown the statutory standard is not met. To hold the contrary would result in conferring upon the Commission a left-handed power to compel a railroad, by refusing the authority sought, to deal with existing truck lines notwithstanding its unwillingness so to do.

The finding of the court below is that the service proposed by Willett was a like and competitive service to that being rendered by certificated truck operators along the routes described in the application. From that premise it finds that there was no proof offered by Willett of the inadequacy of the service of such operators, and therefore the Commission's finding of public convenience and necessity was without evidentiary support. As has been pointed out the application in question did not seek to establish a new and like transportation service; it sought merely authority to improve an existing service. That such was the character of the proposed service the Commission found when it said that it would be of different character from that performed by motor carriers generally, and as restricted

would not be directly competitive or unduly prejudicial to the operation of any other motor carrier. But the court below not only ignores this fundamental distinction, but tries to offset it by a finding that "the operations proposed are motor carrier operations which would be competitive with existing motor carrier service." In so doing it has usurped the Commission's function and substituted its judgment for that of the Commission upon an administrative matter. Compare *United States* v. *Marshall Transport Co.*, 322 U. S. 31; *Gray* v. *Powell, supra; Helvering* v. *Clifford*, 309 U. S. 331, 336; *Rochester Telephone Corp.* v. *United States, supra; Miss. Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286.

If the Commission correctly classified the proposed service as a specialized form of service of a different character from that performed by motor carriers generally, do its evidentiary findings lawfully support the ultimate findings of public convenience and necessity?

"Public convenience and necessity" is closely related to the phrase "public interest." It must be given a broad application consistent with the transportation policy. Thus in *Interstate Commerce Commission* v. *Railway Labor Ass'n*, 315 U. S. 373, 376–377, it was said:

> "The phrase 'public convenience and necessity' no less than the phrase 'public interest' must be given a scope consistent with the broad purpose of the Transportation

> Act of 1920: to provide the public with an efficient and nationally integrated railroad system. *New England Divisions Case,* 261 U. S. 184, 189–191. Clear recognition that 'public convenience and necessity' includes the consideration of effects on the national transportation system of a proposed abandonment appears in the decision of this Court in *Colorado* v. *United States,* 271 U. S. 153. There, Mr. Justice Brandeis, although stating that 'public convenience and necessity' was the sole criterion for determining whether or not an abandonment should be allowed, nevertheless considered the effect of the proposed abandonment in a much broader sphere than the immediate locality and population served by the trackage to be abandoned. See also *Transit Commission* v. *United States,* 284 U. S. 260."

Compare also *Purcell* v. *United States,* 315 U. S. 381, 383; *Radio Commission* v. *Nelson Bros.,* 289 U. S. 266, 285.

The Commission's finding of public convenience and necessity in this case is founded upon factors which have intimate relation to the public interest.

The court below found that Willett's proof concerned improvement in railroad service. Presumably it meant to sustain the contention that the Commission had acted only upon proof of "railroad convenience." This in turn was based upon the showing of economies to be effected. But

the prevention of waste and inefficiency has always been recognized as of public concern. *New York Central Securities Co.* v. *United States*, 287 U. S. 12, 25; *Texas* v. *United States*, 292 U. S. 522, 530. The National Transportation Policy specifically enjoins upon the Commission regulation to promote "economical, and efficient service and foster sound economic conditions in transportation and among the several carriers."

The Commission in this case found that the substitution of motor truck for rail service in the handling of local less-than-carload freight would effectuate a reduction in cost and result in an increase in efficiency in the transportation over the routes involved.

The Commission found that the local less-than-carload freight service of the railroad would be expedited and more frequent by the substitution of trucks for peddler cars in its handling. These two factors bear directly on public convenience and necessity and are a far cry from "railroad convenience."

The Commission found that the substitution of trucks for rail service would result in the release of railway freight cars for other and more important rail service; a consideration that requires no emphasis in war time.

These findings, we submit, are in and of themselves sufficient to support the grant of operating authority. That the Commission went further and considered the relative advantages to be

gained through the use of railroad-owned facilities as against the facilities of appellee motor carriers was not indicative of its view that such consideration was an indispensable ingredient to a valid grant of authority. The Commission had already found that the service Willett proposed to render in conjunction with the Pennsylvania was of public advantage and should be instituted. It merely took note of and answered the contention that appellee motor carriers were able and willing to undertake that segment of the whole service which Willett was seeking authority to perform. Its answer was a reiteration of its judgment which had ripened through consideration of many similar contentions made in many similar cases, namely, that when it appears that all of the stations in question on the railroad's line cannot be served by a single existing independent motor carrier it is more advantageous to the public for the rail carrier to employ its own subsidiary and thus achieve a complete service under a synchronized management in coordination with the railroad's operation. *Kansas City S. Transport Co. Common Carrier Appl.*, 10 M. C. C. 221; *Willett, Co. of Ind.-Extension*, 21 M. C. C. 405, 409; *Kansas City S. Transport Co. Common Carrier Appl.*, 28 M. C. C. 5, 8; *Pennsylvania Truck Lines, Inc.-Extension*, 42 M. C. C. 759, 773.

We submit, therefore, that the Commission in applying the statutory standard in this case was

not bound to weigh the comparative advantages of permitting Willett to perform the motor truck portion of the proposed service as against the advantages of having appellee carriers perform in lieu of Willett. True the latter were willing to undertake this work but they were not "able" to perform in view of Pennsylvania's refusal to deal with them, and the Commission was without power to compel such joint undertaking.

The situation may be epitomized in the abstract as follows:

A and B have agreed to conduct a certain transportation service, each performing a distinct function in providing a single integrated service. This service is unique in the particular field of operation.

B is a new operator and, before he can lawfully join with A in providing the new service, must show that he is fit, willing and able properly to perform his portion of the operation and that public convenience and necessity require the inauguration of the new service.

C is presently engaged in conducting transportation service of a different character from that proposed within the territory involved, but has the facilities and is willing to fulfill B's undertaking in providing this service in conjunction with A.

B shows that he is fit, willing and able to perform his part in providing this new service and

that the new service will be of substantial public benefit.

A states that he is unwilling to deal with anyone but B. Under these circumstances is the Commission required, before it can make a valid finding of public convenience and necessity, to consider the qualifications of C to perform B's part of the proposed service, and must the Commission if it finds that C is willing and able to assume B's undertakings deny B a certificate of public convenience and necessity, notwithstanding that the result will be that the new form of service will not be instituted?

VII. The Evidentiary Facts Upon Which the Commission Acted Have Substantial Support in the Record

We assume that appellees do not seriously contend that the factual findings of the Commission as disclosed by its report are without substantial support in the record: their challenge rests upon the sufficiency of these findings alone as a matter of law. The untenableness of that contention has, we submit, already been shown. We, therefore, content ourselves with giving record references to evidence which lends ample support to the Commission's findings.

As to the utilization of freight cars it was testified that the institution of the substituted motor-truck service would enable the railroad to utilize more efficiently the available supply of cars through more economical operation, elimination

of the use of box cars, the heavier loading of box cars and the conservation of their use. (R. 90–92, 123.)

It was also shown that the proposed service would simply supplement and expedite rail service. (R. 90.) No points would be served other than stations on the railroad line. (R. 108). Willett would not originate any traffic or be a party to any tariff under which shipments would move. (R. 107.) The railroad would originate all freight and it would move on railroad billing. (R. 188.) The railroad, not the applicant, would solicit freight from the general public. (R. 372, 373.) Willett would continue to haul only for the railroad. (R. 162.) It would receive no compensation except from the railroad. (R. 173.) Charges would be based on rail mileage and tariffs. (R. 420.)

The improved service that would result was shown by testimony that the railroad would be enabled to place its service to small towns on a parity with that afforded the larger stations. (R. 136.) Proof was adduced that a saving of twenty-four to forty-eight hours in the time of service would result. (R. 103–5, 112–118.) There was shipper evidence that the expedited service would be beneficial. (R. 244, 268, 281, 284, 294.)

The economies to be effected were shown in savings in car miles, locomotive expenses, handling of freight, yard switching, use of box cars, and overtime. (R. 362–364, 388.)

CONCLUSION

When passing upon the application of Willett in this case the Commission had already dealt with the question of the desirability in the public interest of utilizing motor vehicles in connection with way-freight service of railroads on less-than-carload shipments. To carry out this it had recognized and established a type of motor carrier operation distinguishable from the ordinary type of common carrier service by motor vehicle. It had described the characteristics of this specialized service and had set safeguards against an expansion beyond its peculiar limits. Being essentially an improved railroad service it had applied to individual applications tests which were especially adapted to the service under consideration. As an administrative body charged with the duty of applying the statute in the light of the declared policy it found that those same elements of public convenience and necessity which it had considered determinative in like cases were present here. In so treating the Willett application it committed no error of law which warranted the court below in setting aside the order granting the certificate.

Respectfully submitted.

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APPENDIX "A"

The National Transportation Policy, as set forth in the Transportation Act of 1940, is as follows (54 Stat. 899):

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carry out the above declaration of policy.
>
> SEC. 5. (2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—
>
> (i) for two or more carriers to consoli-

date or merge their properties or franchises, or any part thereof into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

* * * * *

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in the case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such

terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

Part II. "Sec. 206 (a) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: * * *.

SEC. 207. (a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant

is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

APPENDIX "B"

Great Northern Railway Co. Common Carrier Appl.	1 M. C. C. 73
Penna. Truck Lines, Inc.—Acquisition of Control	1 M. C. C. 101
Santa Fe Transp. Co.—Purchase—Rex	5 M. C. C. 1
Penna. Truck Lines, Inc.—Control—Barker M. Frt.	5 M. C. C. 9
Penna. Truck Lines, Inc.—Purchase—Cain	5 M. C. C. 73
Penna. Truck Lines, Inc.—Control—Afko Exp. Lines	5 M. C. C. 77
Texas & Pac. Motor Transport Co.—Purchase—Johnson	5 M. C. C. 89
Santa Fe Transp. Co.—Purchase—Schaeffer	5 M. C. C. 115
Burlington Transp. Co.—Purchase—Bell Transfer, Inc	5 M. C. C. 291
Pacific M. Trucking Co.—Control—People Frt. Line, Inc	5 M. C. C. 302
Rock Island M. T. Co.—Purchase—White Line M. Frt.	5 M. C. C. 451
Motor Transport Co.—Purchase—Jansen	5 M. C. C. 570
Rock Island M. Transit Co.—Purchase—Burlington Transp.	5 M. C. C. 629
Rio Grande Motor Way Inc.—Purchase—Colman	5 M. C. C. 643
Texas & Pac. Motor Transport—Purchase—Southern Transp.	5 M. C. C. 653
Burlington Transp. Co.—Purchase—Sand	5 M. C. C. 658
Kansas City S. Transp. Co., Inc., Common Carrier Appl.	10 M. C. C. 221
Texas & Pac. Motor Transport Co., Common Carrier Appl.	12 M. C. C. 37
Illinois Central R. Co., Common Carrier Appl.	12 M. C. C. 485
Santa Fe Trail Transp., Common Carrier Appl.	14 M. C. C. 577
Texas & Pac. Motor Transport Co.—Extension	14 M. C. C. 645
Texas & Pac. Motor Transport Co.—Extension	14 M. C. C. 649
Minneapolis & St. L. R. Co.—Purchase—Brown	15 M. C. C. 54
Missouri Pac. Frt. Transp. Co.—Purchase—Miller	15 M. C. C. 269
Southern Pac. Transp. Co.—Purchase—Sanders	15 M. C. C. 299
Southern Pac. Transp. Co.—Purchase—Pilarczyk	15 M. C. C. 309
Frisco Transp. Co.—Purchase—Cooper	15 M. C. C. 317
Frisco Transp. Co.—Purchase—Hamm	15 M. C. C. 320
Frisco Transp. Co.—Purchase—Rose	15 M. C. C. 323
Pacific Motor Trucking Co.—Purchase—Keithly	15 M. C. C. 427
Burlington Transp. Co.—Purchase—Busskohl	15 M. C. C. 691
Gulf, M. & N. R. Co., Common Carrier Appl.	18 M. C. C. 721
Missouri Pac. R. Co., Extension	19 M. C. C. 605
Great Northern Ry. Co., Extension	19 M. C. C. 745
Missouri Pac. R. Co., Extension	20 M. C. C. 563
Willett Co. of Ind., Inc., Extension	21 M. C. C. 405

Penna. Truck Lines, Inc., Common Carrier Appl	41 M. C. C. 607
Texas & Pac. Motor Transp. Co., Common Carrier Appl	41 M. C. C. 721
Flatt Common Carrier Appl	41 M. C. C. 791
Kansas City S. Ry. Co.—Extension	42 M. C. C. 74
Frisco Transportation Co.—Extension	42 M. C. C. 219
Penna. Truck Lines, Inc.—Extension	42 M. C. C. 733
Penna. Truck Lines, Inc.—Extension	42 M. C. C. 759
Rock Island Motor Transp. Co.—Extension	43 M. C. C. 470
Campbell Sixty-six Exp., Inc. v. Frisco Transp. Co	43 M. C. C. 641
Burlington Transp. Co.—Extension	43 M. C. C. 729
Rock Island Motor Transit Co.—Purchase, M. C. F. 2374	1/4/45, not yet reported

U. S. GOVERNMENT PRINTING OFFICE-1945